

Wilton Water Commission
WORK SESSION, Friday, May 31, 2013 3:00 PM
DRAFT MINUTES APPROVED 6/27/13

Wilton Water Commission held a public Work Session on Friday, May 31, 2013 at 3:00 PM in the Town Hall Courtroom. Published agenda:

Wilton Falls Building - Backflow Device Information

Present: Commissioners William Condra, Thomas Schultz and Frank Edelblut; Clerk Joanna K Eckstrom; Water Superintendent Mike Bergeron; Paul Whittemore – New England Backflow; Dr. Chuck Crawford – Wilton Falls Building & WMSA

In the absence of a Chairman, Mr. Condra called the meeting to order at 3:03 and explained that work session purpose is to review Wilton Falls Building Backflow Information and other general backflow information. No public input is expected and no decisions will be made; however Commission will allow input if relevant to discussion.

Mr. Schultz said he'd spoken with Paul Whittemore, a certified backflow inspector familiar with the Wilton Falls installation. Mr. Whittemore offered to come to this meeting to explain the purpose of backflow device testing. Ms. Eckstrom had prepared copies of the many references to Wilton Falls Building that she had found in past years' minutes. Mr. Schultz said he had also spoken with former commissioner Bob Duquette, Water Superintendent Mike Bergeron and Fire Chief Ray Dick about this – and summarized his conversations via e-mail to the commissioners.

Mr. Whittemore said the Cross Connection (backflow) program has been in existence since the 80s; Wilton has always been very proactive, even before participation was mandated by DES. Program originally directed by Jim Gill who retired 3 years ago. Whittemore described Cross Connection program as ongoing. He got into the water business in 1992 and worked (tested) for Derry for 11 years. He found that many plumbers weren't familiar with testing protocol so he started own company in 1994; went full-time in 2008. Was hired by Wilton in 2009.

Purpose of Cross Connection program is to protect the water supply. Surveys are done regularly to determine where devices may be needed. When NEB started inspecting for Wilton, he found at least two properties that had both domestic services as well as fire protection systems – Souhegan Wood Products and Wilton Falls; he

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recommended, per Wilton's backflow program, that backflow preventers be put on the fire protection systems at these establishments. NEB had no involvement with SWP's or Wilton Falls' installations.

Ms. Eckstrom confirmed by way of Water Commission minutes that Wilton has done surveys and testing back to 2000.

Mr. Edelblut asked for clarification on what water services might need backflow prevention devices. Whittemore said any hydrant, irrigation, fire protection and even some domestic services that have potential of contaminating water supply and explained the technology. A spray nozzle sitting in a hair salon or restaurant sink could suck chemicals, cooking, cleaning liquids into the water line – the backflow preventer keeps this from happening.

With regard to failure rate of devices, Whittemore said 15% in the early days; now it's around 4/60. In his experience, he has found that age of a device doesn't matter. New and old devices can pass or fail. Sometimes sand gets into a device and skew test results. When testing is done, result repeatability is a factor. He said a nice part of working in a small town is that you know your customers and understand potential risks.

Mr. Condra thanked Mr. Whittemore for his explanation of his services but said that purpose of this meeting is not a contract issue.

Mr. Schultz gave each commissioner a copy of the current testing agreement with New England Backflow and also a copy of the letter that is sent to customers in the spring advising that testing is due. He said Mr. Whittemore is here because the Commission received a letter written in behalf of Wilton Falls from Peter Caswell, a licensed pump installer and retired chairman of Water Well Board. Caswell writes that "The 2009 International Plumbing Code ... does not require the installation of a backflow preventer on dry pipe sprinkler systems" and cites several other reasons for not having the device and recommends that it be removed as soon as practical.

Mr. Schultz said that since no current commissioner was involved when this began in 2009, the hope is that Mr. Whittemore can shed some light on why previous

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commission so vigorously insisted on the device being installed to the point of seeking legal counsel. Mr. Schultz' understanding from speaking with two former commissioners is that this wasn't a unanimous decision. Said current commission has been asked by building owner / tenant to have device removed.

Mr. Whittemore said he was aware of some legal processes going on for both sides and believed that the ordinance held up.

Mr. Condra said that there never was a legal challenge, it never went to court. There was discussion with Town Counsel Silas Little and input from Bill Keefe who represented WMSA. Mr. Condra said he was a selectman when the issue first came up and was brought to the Selectmen's attention by WMSA. Condra was/is Building Inspector for the City of Nashua with six years experience as a Plumbing Inspector and in all that time, he said there has never been a single challenge to having backflow protection devices on a dry sprinkler system, quite surprising for a city of 96K people. All of a sudden, here is tiny Wilton and there's a challenge. Condra assembled a lot of documentation, letters from people like Peter Caswell, comments from Fire Chief's Association members and he introduced the Selectmen to the International Plumbing Code 2009 where it says that devices are not required on dry sprinkler systems. But in all this documentation, while there is a division of opinion, there are strong presentations for having the device on **all** (wet or dry) systems. But, there's a counterbalance that suggests it might be inappropriate to impose the requirement on dry systems. At that time, Condra didn't think there were many dry sprinkler systems in town and, based on information he had (and there being no requirement in the plumbing code), he suggested to the water commission that they not impose the requirement on dry sprinkler systems.

Speaking very candidly, Condra said that relative to the Main Street Association, he felt that the then commission was extremely heavy-handed in their attitude ... that commission took an action that he thought they felt they were empowered. Had he been a commissioner at the time, he probably would have voted against this action.

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88 With regards to WMSA wanting to remove the backflow device on their dry
89 sprinkler system. Mr. Condra suggested that any action that this board takes should be
90 considerate of all properties that have dry sprinkler systems.

91 Mr. Edelblut said when he read minutes that were sent out, two questions arose:

- 92 1. Is there a conflict between DES rules and the Plumbing Code? – DES says
93 the device is needed; plumbing code says it's not.

94 Mr. Schultz thinks water commission's interpretation and cross connection
95 program is based on DES rules. Schultz said he'd spoken with Bob Duquette
96 and Charlie McGettigan, both former water commissioners. McGettigan was
97 very clear that he disagreed with his colleagues that a device was needed on
98 a dry system regardless of how it was interpreted through the Cross
99 Connection program and he voted against it. Mr Schultz referred to the
100 minutes where it is indicated that many votes on the subject were unanimous.
101 Mr. Duquette's opinion was quite different from McGettigan's. Duquette
102 referred to a section of the plumbing code (second page) which says that if
103 local, state or federal rules are stricter, they supercede the plumbing code. In
104 Duquette's view, Wilton's Cross Connection rules were stricter. Mr. Schultz
105 said he really didn't get a definitive answer from either commissioner as to
106 why it (the device) is required and the Fire chief's response was either way,
107 he did not have an opinion of whether it's required or not required.

- 108 2. Mr. Edelblut asked why don't we adopt IPC rules instead of making our own?
109 3. And to please explain "If Water Commissioners determines a device is
110 needed and is not installed, water will be shut off."

111 Mr. Schultz said Commission has authority to turn water off. It is WWW
112 water; commission has responsibility to protect the water supply and water
113 users. Previous commission may have felt they are responsible to enforce
114 their ordinance.

115 Eckstrom said Water Commissions follow a DES template to create the
116 cross connection ordinance; it isn't something that commissioners make up

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as they go along. Initial ordinances and updates are approved by DES and other authorities. Mr. Whittemore distributed copies of Wilton's Cross Connection Program as well as authorizations from the state.

Mr. Condra repeated that IPC recognizes that stricter rules supersede DES but felt that many municipalities aren't adopting or updating their Cross Connection Programs.

Mr. Schultz asked for input from Water Superintendent, Mike Bergeron. Mike agreed that the industry recognizes Administrative Rule 364 as the 'model' for cross connection programs.

Mr. Whittemore said Pennichuck has a very aggressive program which he recognizes as outstanding. Even though they're called 'dry pipe' systems, there is always some water and potential for air-borne contaminants to be around; with air pressure of 150 pounds in the dry system, he stands firm about his recommendation that backflow preventers are **necessary** on dry pipe systems.

Mr. Whittemore asked if there's a "Y" connection on outside of the building. NO. In some communities, they're recommending / requiring "Y" connections and RPZs. There are some inequities with this.

Mr. Bergeron said that it is the utility (Wilton Water Works) that determines the hazard level and what device is needed to protect the water supply and users from any potential hazard. Mr. Schultz asked if this device (reduced pressure) is a fire hazard. Both Mr Bergeron and Mr Whittemore said no.

Mr. Condra said that if a device is present, it must be tested.

Mr. Schultz doesn't necessarily agree with the way the Wilton Falls installation came about but now that it's in place and not damaging or impeding the water system and it's not creating a financial burden, if we reverse this then we have to reverse it for everybody which is what Mr. Condra said in his opening statement. The referenced part of Cross Connection Program would need to be revised; Mr. Condra said a paragraph could be added for an exceptions paragraph and we'd except the requirement of a backflow prevented on dry systems.

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Mr. Schultz' further concern was when you reverse an ordinance, you open a can of worms. First, could the commission be held liable for all the expenses that were incurred by a previous commission's requiring someone to do something? (In Wilton Falls case, this includes \$7000 in legal fees, plus installation costs and everything else. Second, if we reverse and then at some later date find that contamination of the water supply did occur after a device is removed, are we liable?

Schultz repeated that he didn't agree with the previous decision or the way that it was enforced but now that it's in place, functioning and not causing financial burden, unless there's something he's not aware of, it was unclear to him how the presence of the device is costing thousands of dollars a year as Dr. Crawford and colleagues stated at last week's meeting. (Note – the device was installed at Wilton Falls Building late in 2011; it was tested twice (routinely) in 2012 and passed. Cost for 2012 is \$110.)

Dr. Crawford was asked to explain this but noted that it was announced that there would be no public comment at this session. Mr. Schultz reminded Dr Crawford that his comments about WMSA financial situation are in the last week's minutes; comments that he makes tonight will also be in the minutes and posted, including his comments about WMSA financial position. Dr. Crawford said he would be delighted to elaborate if the Commission permits.

Dr. Crawford said the important point about DES is that he's had several conversations with them and they have stated, in writing, that they do not have jurisdiction over this issue. What DES regulates is water outside the building foundation; once it's inside, the Plumbing Code controls. There was a letter that the prior water commission had from DES in which someone up there made some recommendations but in talking to the top management, DES doesn't want to give you answers because of your 'turf' ... different people up there have different opinions. The thing that controls the situation that you're addressing now is the Plumbing Code.

Second to Tom Schultz comment, Dr Crawford said he and his company, Kimball Physics, are major financial backers and have invested ~~ored~~ \$100K in the Wilton Falls building. Additionally, he set up a \$50K account at First NH Bank to protect WMSA

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from financial troubles due to the economy – this was quite a few years before the current economic decline in 2008. That \$50K was there for WMSA to use if they needed it, however, he was concerned, because of legal advice, that an organization that is totally volunteer like Main Street is susceptible to falling under a rogue religious group, and per legal advice he never donated that \$50K to WMSA and never took a tax deduction for it. Instead, he took a note for it even though he never had any intention of taking that money back. There is an additional \$10K for general operating use

He said the former water commission put very intense pressure on WMSA to install the device. Crawford advised them not to install it but the water service was shut off, forcing the installation. The water commission's forcing this upon WMSA, a volunteer organization, was grossly unfair especially in light of everything Main Street has done for the Town. Crawford recommended WMSA taking the Commission to court however there was no court action.

Now, Crawford is sorry to say that he has taken the \$50K back. The mortgage is in arrears. Crawford has made a promise to WMSA that if they clean up this subject and take the device out, he will bail them out.

The outgoing president of WMSA, Dick Sharkey, who had hoped to be here today, has put thousands of dollars of his own into the building. If something doesn't happen (this board immediately reversing its decision), the mortgage will be pulled and foreclosure started.

Mr. Schultz empathized with WMSA situation but said that Dr Crawford's taking back the \$50K was his own undertaking and had nothing to do with this or the prior board. Dr. Crawford said that this board's reversing the decision would be a way of correcting a grievous error made by the previous board. If foreclosure does occur, the town will lose valuable property, municipal parking spaces, and quite possibly an organization that has done much good work for the town of Wilton. Crawford said he loves the Town of Wilton and personally owes the Town for his heritage, livelihood, etc.

Again, Mr. Schultz stated that it is costing WMSA only \$110 a year and that it was Dr Crawford's decision alone, not the water Commission's to take back the \$50K.

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It's not reasonable for him to 'blame' the water commission for this. Mr. Schultz agreed that the previous commission may not have handled the situation well but they are not responsible, nor is the placement of a backflow device at the building, responsible for WMSA's current financial situation.

Dr. Crawford disagreed that contaminated air getting into the water supply is a good reason to require a backflow preventer on a dry system but supported their being needed on 'wet' systems.

Mr. Whittemore repeated his recommendation that backflow protectors be required on dry systems.

Ms. Eckstrom said that, going back in the minutes, she found that surveys have been done every year to identify any location that needs a backflow device whether it be for domestic service, irrigation or fire protection.

Mr. Condra thanked everyone for their input and comments and said that any further discussion or a decision on this issue would take place at the June meeting.

As it was not included on the agenda, the Commissioners unanimously agreed to hear a brief report from Mr. Bergeron about the status of the Gregoire Circle / Seagroves Rd water line. In his opinion, it's more practical and cost effective to install 6" C900 pipe with saddles than the 1" pipe approved at the last meeting. He was given the go ahead on this.

Mr. Bergeron said that the Pine Valley Mills project kick-off this morning went very well.

There being no other business, the meeting was adjourned at 4:40 PM.

Respectfully submitted,
Joanna K Eckstrom, Clerk

Wilton Water Commission – William Condra, Frank Edelblut, Thomas Schultz
Commissioners.